creditor, but under the contract. However, the mere fact that there is a contract right to a transfer will not prevent it from being a preference. *National City Bank* v. *Hotchkiss*, 231 U. S. 50. It has been held that a transfer of goods within the four-month period, according to a prior agreement, as payment for money that had been advanced to be used in their production is not a preference. *Hurley* v. *Atchison, etc. Railroad Co.*, 213 U. S. 126; *Sieg* v. *Greene*, 225 Fed. 955. *Cf. In re Klingaman*, 101 Fed. 691. But in the principal case no part of the equipment was obtained with the money advanced by the company. The decision, nevertheless, may be justified by considering the contract as one to cut timber or, upon default, to convey the property. A default having been committed, there remains the promise to convey the mill and its equipment. This promise, although it relates partly to personalty, is specifically enforceable, for it also involves land and is indivisible. *Leach* v. *Fobes*, 77 Mass. 506; *Fowler* v. *Sands*, 73 Vt. 236. There arises then an equitable ownership in the equipment which strips the transfer of its preferential character.

BILLS AND NOTES — PURCHASERS FOR VALUE WITHOUT NOTICE — BURDEN OF PROOF IN SUIT FOR CANCELLATION. — In a suit by the maker for the cancellation of a negotiable instrument shown to have been secured by fraud of the payee, the question arose as to who had the burden of proving the defendant holder a holder in due course. Section 59 of the Negotiable Instruments Law provides that "Every holder is deemed *primâ facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course." *Held*, that the burden is on the defendants. *Lundean* v. *Hamilton*, 169 N. W. 208 (Ia.).

In a bill in equity for cancellation of an instrument for fraud, failure to allege that defendant is not a purchaser for value without notice is a demurrable defect. *Molony* v. *Rourke*, 100 Mass. 190. And what a party must plead he has the burden of establishing. LANGDELL, EQUITY PLEADING, 2 ed., § 185. The rules in equity should also apply to equitable defenses at law. Logically, therefore, in an action at law on a negotiable instrument by a subsequent holder, a maker setting up the defense of fraud should have the burden of establishing that plaintiff took with notice. But the rule developed that this burden be transferred to the plaintiff when fraud is shown. Its origin may have been in the principle of a discovery, the facts being peculiarly within the holder's knowledge. *Cf. Lord Portarlington* v. *Soulby*, 6 Sim. 356. In view of the pleadings the only burden shifted to the holder should be that of going forward with the evidence. Such burden, however, the courts confused with that of establishing the facts by a preponderance of evidence, owing to the dual aspect of the ambiguous term "burden of proof." See Abbott, "Two Burdens of Proof," 6 HARV. L. REV. 125; 4 WIGMORE, EVIDENCE, §§ 2483–2489. Thus the rule became established that this ultimate burden should be saddled upon the holder. *Harvey* v. *Towers*, 6 Ex. 656; *Atlas National Bank* v. *Holm*, 71 Fed. 489. The same interpretation is made under the Negotiable Instruments Law. *Parsons* v. *Utica Cement Co.*, 82 Conn. 333, 73 Atl. 785; *Leavitt* v. *Thurston*, 38 Utah 351, 113 Pac. 77. Being settled at law this construction should be followed in equity, although the result conflicts with the pleadings. *Regester's Sons Co.* v. *Reed*, 185 Mass. 226, 70 N. E. 53; *Mills* v. *Keep*, 197 Fed. 360.

CONFLICT OF LAWS — TRUSTS *INTER VIVOS* — WHAT LAW GOVERNS. — Two settlors, of New York and New Jersey respectively, contributed an equal amount to a fund of which they declared themselves trustees by instrument

executed in New Jersey. The fund was in New York and a New York trust company was named as alternate trustee. The New Jersey settlor died, and the New York settlor filed this bill for a settlement of accounts and a construction of the trust deed. The question arose as to what law governed the disposition of unexpended accumulations. *Held*, that the New York law governed. *Curtis* v. *Curtis*, 173 N. Y. Supp. 103.

It is well settled that the validity of a testamentary trust of personalty is determined by the law of the testator's domicile at the time of his death. *Whitney* v. *Dodge*, 105 Cal. 192, 38 Pac. 636; *Canterbury* v. *Wyburn*, [1895] A. C. 89. *Cf. In re Crum*, 98 Misc. 160, 164 N. Y. Supp. 149. See 19 HARV. L. REV. 457. As to declarations of or transfers on trust *inter vivos*, the law of the *situs* of the *res* would seem to govern its validity, as that law alone can effectively create an interest in the *res*. See *Cammell* v. *Sewell*, 5 H. & N. 728. *Green* v. *Van Buskirk*, 5 Wall. (U. S.) 307, 7 Wall. (U. S.) 139. See also 20 HARV. L. REV. 382, 394. Where, however, it is held that the *cestui que trust* acquires but a right *in personam* against the trustee and not rights *in rem*, though the validity of the transfer to the trustee would be determined as above by the law of the *situs*, yet the validity of the trust would be determined by the law of the place of the declaration of or the transfer on trust. See 17 COL. L. REV. 467, 497. In either case the administration of a trust of personalty must be governed by the law of the place where the testator or settlor intended the trust to be administered. *First National Bank* v. *National Broadway Bank*, 156 N. Y. 459, 51 N. E. 398. See 20 HARV. L. REV. 382, 395. See also 17 HARV. L. REV. 123, 570. As in the principal case it was clear that the settlors intended the trust to be administered in New York, and as the right of the life *cestui que trust* to accumulated income is a question of administration, the court properly applied New York law.

CONSTITUTIONAL LAW — CONSTRUCTION, OPERATION, AND ENFORCEMENT OF CONSTITUTIONS — FEDERAL POWER OVER LANDS OF UNITED STATES WITHIN A STATE. — Section 2296 of the United States Revised Statutes provides: "No lands under the provisions of this Act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor." The entryman contracted debts, some before the issuing of the final certificate, others after it but before the issuing of the patent. *Held*, that the statutory exemption covers all these debts. *Ruddy* v. *Rossi*, U. S. Sup. Ct., No. 17, October Term, 1918.

For a discussion of this case, see NOTES, page 721.

CRIMINAL LAW — HOMICIDE — THREATS — THREATS TO TAKE THE LIFE OF THE PRESIDENT. — An act of Congress made it an offense punishable by fine of $1,000 or imprisonment not exceeding five years, or both, knowingly and wilfully to make a threat against the President. 39 STAT. 919, c. 64. An indictment was brought under this act charging John Stobo with making a threat in the following language: "The President ought to be shot and I would like to be the one to do it." The indictment did not allege that the threat was addressed to any one, or that it was uttered with intent to menace the President, or that any one heard it. *Held*, that the indictment fails. *United States* v. *Stobo*, 252 Fed. 689 (Dist. Ct., Del.).

For a discussion of threats under this statute, see NOTES, page 724.

EQUITY — EQUITABLE EASEMENTS OR SERVITUDES — INTENTION OF PARTIES. — In developing a tract of land for the sale of building lots, the owner installed a sewage system according to a plan, the system being operated by a pumping plant on the owner's land. By an agreement with the village the owner agreed to run the plant as long as the system should be in use. After a number of